

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
05/11/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Elizabeth Draper
41H-0952-R-2023
Nordlund, Julia
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Julie A. Bennett; R&J Revocable Trust; Spain
2006 Family Trust

CASE 41H-0952-R-2023
41H 148423-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The claim in this case appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks questioning the point of diversion and source. The claims received no objections, counterobjections, or notices of intent to appear.

2. On February 3, 2023, the Court consolidated this claim into case 41H-0952-R-2023 and asked Claimants to file evidence resolving the issue remarks.

3. On March 27, 2023, Claimants filed evidence supporting the following changes.

4. Claim 41H 148423-00 appeared in the Preliminary Decree of Basin 41H with the source listed as Bird Spring Creek.

5. Claimants state the point of diversion is correct as the reservoir is fed by springs in the SWNW Sec. 30, Twp. 2S, Rge. 6E. However, the means of diversion is more accurately described as a developed spring, not a dam and the source name should reflect "Spring, Unnamed Tributary of Bird Spring Creek."

6. The point of diversion and source issue remarks are resolved with these changes and the information provided by Claimant.

7. The remaining issue remarks on the claim are notice-type issue remarks and can be removed.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

7. For the above-mentioned reasons, the claim in this case should be modified as shown on the attached abstract to resolve all issue remarks and to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstract of Water Right Claim is served with this Report to confirm that the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Julie A. Bennett
PO Box 81
Bozeman, MT 59771

R & J Revocable Trust
% Richard Deming & Julie Bennett
Trustees
82 Centennial Trl
Bozeman, MT 59715-8604

Spain 2006 Family Trust
Matthew & Kristen Spain Ttees
77 Centennial Trl
Bozeman, MT 59715

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 148423-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JULIE A BENNETT

PO BOX 81

BOZEMAN, MT 59771

R & J REVOCABLE TRUST

% DEMING, RICHARD & BENNETT, JULIE TRUSTEES

82 CENTENNIAL TRL

BOZEMAN, MT 59715 8604

SPAIN 2006 FAMILY TRUST

MATTHEW & KRISTEN SPAIN TTEES

77 CENTENNIAL TRL

BOZEMAN, MT 59715

Priority Date: MAY 1, 1971

Type of Historical Right: USE

Purpose (use): FISH AND WILDLIFE

Flow Rate: 10.00 CFS

Volume: 21.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BIRD SPRING CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNW	30	2S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
NWSWNW	30	2S	6E	GALLATIN	

Diversion to Reservoir: DIVERSION # 1

Dam Height: 9.00 FEET

Depth: 6.00 FEET

Surface Area: 4.00 ACRES

Capacity: 9.60 ACRE-FEET

SEE THE QUESTIONNAIRE FOR FISH AND WILDLIFE CLAIMS IN THE CLAIM FILE FOR
ADDITIONAL RESERVOIR DATA.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNW	30	2S	6E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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